

THE STATE OF NEW HAMPSHIRE
CRIMINAL CODIFICATION COMMISSION

HEARING HELD DECEMBER 16, 1970, 10:00 a.m.

ROOM 318, STATE HOUSE

CONCORD, NEW HAMPSHIRE 03301

PRESENT:

CO-CHAIRMEN:

Kimon S. Zachos
James Koromilas

MEMBERS OF THE HOUSE AND
SENATE JUDICIARIES AND COMMITTEES

Stenotype Reporter:
Robert N. Robie

CHAIRMAN ZACHOS: The hearing of the joint committee will commence and we will proceed to take public testimony on House Bill #904. The report of the Commission for the Recommendation of the Codification of Criminal Law. As I have previously indicated, we will begin by taking in chronological order chapters 589 through 607 of the proposed bill. At the end of that testimony anyone present will be offered an opportunity to go back and, hopefully, in an abbreviated fashion make general comments on anything he wants to and anything that he perhaps did not present at the last meeting. I ask that the witnesses step forward and state their name and their address and who they represent, if anyone, so the stenographer can make a record of it. Anyone present wish to be heard or have testimony on proposed chapter 589? Breaches of the Peace and Related Offenses.

CHIEF BALL: Do you want to take the whole 589, or one chapter at a time?

CHAIRMAN ZACHOS: The chapter on Breaches of the Peace and Related Offenses.

CHIEF BALL: My name is Chief Ball from the town of Londonderry and on 589:1, paragraph IV. "Riot is a class B felony if, in the course of and as a result of the conduct, any person suffers physical injury, or substantial property damage occurs..." the word "substantial" is a little bit vague. I think it would be much better, you know, much easier for us if we had a dollar figure if possible. I realize with inflation there is a problem, but, I was wondering whether or not the committee might want to insert a dollar figure. I am not prepared to say what it would be. Clearly define to the police department when they make up a complaint what is in fact a class B felony as to the matter of, "substantial". And as far as we who are drawing up the complaint, we don't care if it's \$500 or \$5,000.

REP. BRUNGOT: What paragraph are you on?

CHIEF BALL: Chapter 589:1, IV, it has in there "substantial property damage" which again becomes argumentive and makes it very difficult for the police officer in drawing up the complaint as to whether it should be a class B felony or one of the other charges. And, 589:2 paragraph II, (c) "...in a public place, he engages in a course of abusive or obscene language or makes obscene gestures;..." now, we have had problems where a fellow was not in a public place but was making obscene gestures to a woman neighbor. This is not a public place as defined under the law if I am not mistaken and as such we are unable to act, or would be unable to act in this particular place and I again wonder if you might strike the words, "in a public place" of an obscene gesture to anyone or anywhere is a violation, which again is a minor charge but at least gives us something to work on. Whereas, a public place limits us to a highway or a public building, and of course most of this stuff occurs neighbor to neighbor or perhaps not in a public place.

SENATOR CHANDLER: On that particular point, I understand what you mean. But here in Concord we recently had a case where someone did something wrong on a backporch and he was prosecuted.

CHIEF BALL: Well, it depends what the offense was, it doesn't require a public place you see.

SENATOR CHANDLER: Well, this was an obscene gesture. The present law--I better not say that the present law requires a public place, I am not sure on that.

CHIEF BALL: I know I did make a note; RSA 570; songs or words does not require a public place, this is the present law we have had. That would be 570 paragraph III.

REP. BRUNGOT: I get mad sometimes and swear.

CHIEF BALL: We are not concerned with that part, I don't think swearing is obscene

anymore. Again, 589:4, paragraph III "repeatedly insults, taunts or challenges another in a manner likely to provoke a violent or disorderly response." The word, "repeatedly" again leaves something to be desired from a prosecution standpoint. We get a complaint and don't know how many times is, "repeatedly?" Is it twice or six times?

REP. BRUNGOT: In paragraph II?

CHIEF BALL: The one I am on now is 589:4, paragraph III, where it reads "repeatedly" in there. There is some apprehension from the police standpoint where it says, "repeatedly". What we are judged to be "repeatedly". And, 589:5, Intoxication "...in a public place or in a private place where he unreasonably disturbs other persons therein." There is not too much discord here except for the fact that sometimes we get people who are parked in a field, not their own-- not their own property who are intoxicated and we generally hold them until they are sober but, again if we are limited to a public place we would be able to no longer do this; we would either have to station an officer there until the man got sober or let him go.

SENATOR CHANDLER: Isn't there a book of words and phrases for some of these points to be covered in a book in a satisfactory way or is there a need to define these?

CHAIRMAN ZACHOS: I think the Chief is aware of what you refer to, the volumes used have numerous definitions of a public place, but I think the crux of the Chief's testimony is that some of these offenses are only offenses if they occur in a public place. He wants them to be defined differently than that and make them an offense if they occur on private property. I don't think he is arguing about the definition of a public place.

CHIEF BALL: No. If we are called, say, by a person who has somebody parked on

his property and in that particular case the person is intoxicated, we can have the car towed or something knowing with the individual if we can control him if he is not in a public place.

CHAIRMAN ZACHOS: What would you do if I wanted to get stinking drunk and it happens to annoy my neighbor, are you implying I should be guilty of a violation?

CHIEF BALL: No, this is not on their property. But, if the area they are parked is in a field and they happen to be intoxicated we can put them in protective custody until they are sober and then take them back--it protects the person before they start driving. It's a delicate situation, I agree.

CHAIRMAN ZACHOS: I don't know how you want us to change it; that is all. Suppose, I am in my own front lawn and I am stinking drunk and my neighbors decide that they have had enough of my company, and politely ask me to leave and I not so politely refuse to leave, now, it seems to me this statute of being intoxicated in a public place or in a private place is unreasonable. It could also be covered in the trespassing law.

CHIEF BALL: What I run into occasionally, in my town or perhaps any town is that the person is not in a public way but he is merely intoxicated and it's a question of whether we are going to leave him there, which I am not trying to punish him--not trying to arrest him--but we have an obligation to kind of protect him not only for himself but other people until such time he is reasonably sober and able to operate a motor vehicle or have someone come after him. I only threw that out for whatever it's worth.

CHAIRMAN ZACHOS: Okay.

CHIEF BALL: That is all I have.

REP. RECORD: Under Disorderly Conduct, II (b) I don't understand, "unreasonable noises" what constitutes "unreasonable noises"?

CHIEF BALL: I slipped up on that one, I didn't notice that. Again, I think in this particular case unreasonable noise is you have to disturb someone.

REP. RECORD: Well, what might disturb you might not disturb me.

CHIEF BALL: Well, thank God we have a judge for that.

REP. BRUNGOT: In my building if one tenant disturbs another tenant, what are you going to do?

CHIEF BALL: Well, it's difficult to say. We have a law that if he disturbs others we can perfect an arrest if he is disturbing other people, but normally we speak to him first and ask him to quiet down.

REP. BRUNGOT: If it's in the daytime or in the evening; say they got company?

CHIEF BALL: If they are disturbing the peace and there is a violation of the law we have now we could affect an arrest.

REP. BRUNGOT: What can a landlord do?

CHIEF BALL: Well, generally talk to them and ask them to be quiet. We can arrest them if they are disturbing the peace--if they are violating the law.

REP. BRUNGOT: I kicked two of them out. One upstairs and one downstairs so the whole house is empty.

CHAIRMAN ZACHOS: Any further questions of Chief Ball? Thank you, Chief.

MR. KING: Tom King, from Manchester, New Hampshire. 589:2, Disorderly Conduct. I think at times you find where a person will not be able to tell another person to leave the scene. Say in a brawl, and nobody has the opportunity to leave and they end up with a violation, I think that is bad. I think it should remain--should be a misdemeanor. You find if you have serious brawls nobody will be afforded the opportunity to leave. Whether it's a surveillant or a policeman.

SENATOR CHANDLER: 589:2?

MR. KING: 589:2. "Disorderly Conduct is a misdemeanor if the offense continues after a request by a person to desist. Otherwise it is a violation." That is one thing I got, and on 589:3, it says, under False Public Alarms, and it says--they're leaving out the word "crime". It says: the reports concerning a fire, explosion or other catastrophe or emergency knowing such report to be false. Say, he comes and reports a false report of it stolen, I think the word "crime" should also be in there.

REP. BRUNGOT: Where would you put it?

MR. KING: Well, anywhere. It says concerning a fire, explosion or catastrophe or emergency and it could be a car--some other cars.

CHAIRMAN ZACHOS: Tom, I am told by the staff that a false report of a crime; 586:4 calls for false reports to law enforcements and 589:3 talks about false public alarms. So that matter seems to be covered, but we'll check it to make sure.

MR. KING: I suppose it's a good law, but I think that should not be classified as a violation, it should be definitely a misdemeanor and to continue on further it's one crime that normally ends up in the county farm and the Supreme Court. Back to Williams vs. Illinois, if a person is poor he cannot be confined to jail and unfortunates if they have no money there is no way to put them away to rehabilitate them. The violations says you cannot put them away on this principal or put them in the county farm, so what do you do with them.

REP. BRUNGOT: Put them down cellar.

MR. KING: If a person cannot afford to pay a fine like a violation.

SENATOR CHANDLER: I wonder if the staff could explain or give a clarification

of a misdemeanor, a felony, and a violation.

MR. DEACHMAN: I don't think that was the intent of the violation, it's not meant that way.

CHAIRMAN ZACHOS: In other words, going through a stop sign.

SENATOR CHANDLER: What is a felony?

MR. DEACHMAN: A felony is greater than a misdemeanor.

CHAIRMAN ZACHOS: Senator Chandler, you may want to make a note of page 7 of the report. There is a further--starting actually at the bottom of page 6 and it sets forth the clarifications of crimes.

SENATOR CHANDLER: Oh yes, I see it.

MR. KING: On 589:4, Harassment, it says here under III, "...insults, taunts or challenges another in a manner likely to provoke a violent or disorderly response." Personally, I think that is a good law. It doesn't spell out that has to be in a public place as it did previously. Is that correct, that it replaces 570:2, that is, "Derisive Words?" It says here it replaces several statutes and that means this law is going to be null and void?

CHAIRMAN ZACHOS: Yes, that is the extent of this proposal.

MR. KING: Okay, this is a good law. And, Loitering I think is good too. I guess that is all.

CHAIRMAN ZACHOS: Any questions by members of the Committee of Mr. King?
Thank you.

CHIEF SWEENEY: I am Chief Sweeney from Belmont, and before I get to hung up on a public or private place, again I am reminded of handing out five dollar bills and nobody would pick them up because, at the last two hearings when we propounded the assault statute, and I said if we just include the phrase in the present statute of, "Breach of the Peace" in other places, I think we would cover all these other situations. The only other opinion I have is

on 589:5, Intoxication. This replaces 570:17-a, "Inhaling Toxic Vapors for Effect". And, 570:17 being particularly directed towards "glue sniffing" and, this stuff is so harmful to kid's liver and possible brain damage and everything else; I think we should retain it under "glue sniffing." The mere inhalation of these vapors as an offense and also permits the juvenile-- or commit the person to mental health treatment which your 589:5 does not permit, and I think this should be retained. I have no other comments on this.

SENATOR ENGLISH: Chief, just a minor question. What is the difference between being drunk and under the influence of intoxicating liquor; are they the same?

CHIEF SWEENEY: I think so. Just in the public mind a drunk has to be falling down, and "under the influence" means the faculties have been impaired to a degree and I think it is just a matter of definition.

SENATOR CHANDLER: Maybe a half way or quarter or something of that nature?

CHIEF SWEENEY: I think so.

CHAIRMAN ZACHOS: Any further questions? Thank you, Chief.

CHIEF REYNOLDS: Chief Reynolds from Gilford. I guess I am going to have to start by going back over a few times before. That is, this business of degrees of felonies, and misdemeanors, and violations seem to cause a great deal of confusion on almost every one of these problems, and it seems it might be a good time now to consider the possibility, or at least throw it out for whatever value it might be, to make all of these offenses in the code, I think they are misdemeanors; felonies and I think leaving the sentences up to the discretion of the Court and what it is going to do and the amount on the fine, and, as I say, I think we are wasting a lot of time trying to grade all of those things in the code. Some of these topics which we are going to discuss

in this section as violations and I sometimes wonder about the constitutionality of putting a man in jail when he doesn't have the money to pay his fine when the Supreme Court indicated a man cannot be sentenced to serve more time in jail for failing to pay his fine than he could if he had been sentenced to jail under the statute. Now, this statute doesn't sentence him to jail in lieu of paying his fine. Going specifically to 589, the one I referred to is "Riot." If we recall in 1965, the riot statute currently in effect and drawn up and passed just prior to the motorcycle season that year in order to handle riot situations in this state. The statute was very carefully drawn and being from the motorcycle area, I am sure that has served well and served well in more than one instance. Under the old--the present statute it says: One or more persons together and acting in a disorderly manner." That can be considered to be a mob action and you don't have to get a lot of people, but just one person knowing what the other two have in mind. The value of this is when you order them to disperse, making this an order under this statute you make no mistake, and they generally disperse and I see no provisions in this statute that gives us this tool. Where in effect, we are going to have to actually get into a situation and effect an arrest before we can be very effective. In essence, I am saying that the present statute is better than the new one and should be retained. I will go on to 589:2, unless there is some questions on that? (no comments) 589:2, Disorderly Conduct. I think this seems to be a good statute in some instances except where it is considered a violation, and this goes back to my initial remarks; I just can't come to grips or understand why these are misdemeanors or grade A or B felonies, and I don't think in any instance disorderly conduct should be a violation. Chapter 589:3, False Public Alarms. I think we have the same problem with this particular code on law enforcement. That specifically

being that the person has to purposely communicate to an official or a volunteer fire department or other government agency. I think it should read if he causes a communication to be made to these people. If he has caused or actually makes his communication, I think he is just as guilty as if he makes it himself--the false report to the law enforcement. Chapter 589--

SENATOR ENGLISH: You mean any persons that were put up to making this report?

CHIEF REYNOLDS: Well, I have experienced persons who made the report and didn't realize--he was asked to do it, so he did it. An emergency situation generally exists, and the fellow making it isn't going to analyze whether or not he was put up to do it when somebody rushes in and tells him to call the fire department, he is going to do it. And, then later on, when the smoke clears he finds out he was just the middle man--we have had that in cases of a crime.

CHAIRMAN ZACHOS: Well, in that case here--if you came into my store and told me to call the police or call the fire department, "there is a fire outside" and I called and then you said you were just joking; under this statute I would not be guilty of any violation.

CHIEF REYNOLDS: No, you would not be; but neither would I because I didn't communicate anything to an official.

CHAIRMAN ZACHOS: Well, you should be because even though you didn't communicate to the officials you caused a communication to be made.

CHIEF REYNOLDS: Chapter 589:4, Harassment. This replaces the current statute on: "Abusing or Obscene Telephone Calls" and I think it's inadequate in a couple of areas. First of all, in the present statute it sets out that the call, or the person who makes the call, may be charged as having committed an offense either in the place the call was received or made from; and this is

particularly valuable when you have a person calling from one town to another. For instance, if a call is made from Laconia to Gilford it spells out either place has jurisdiction, and if its not spelled out; a person in Gilford receiving calls from a person in Laconia, it could get to be a sticky situation--who has jurisdiction and what is in fact served us well in all instances--we have had several of these cases and the jurisdiction is resolved right in the statute. Also, the current statute spells out if there is any obscene language used, or abusive language, that is a prima facie evidence of an intent to annoy. That is, of course, one of the things you have got to prove from the statute, that is an important thing to retain. Also, the fact I don't think under any circumstances that should be considered a violation, that also should be a misdemeanor. Chapter 589:5, Intoxication. I think this is inadequate for two reasons: First of all, it makes intoxication a violation, and this has been testified to prior to my testimony, many instances these people who are drunk out on the street; the best thing that could happen to them is to put them in jail or the house of correction for ten days, and sometimes it's the only warm housing and the food they can have. Also, as Chief Sweeney testified, this replaces "Inhaling Intoxicating Vapors for Effect" and by taking this away there is something more important, the fact that it is a violation for the law, I think the power of the Court to commit the individual that is using glue to a mental institution or analysis is a very valuable tool and should be retained. That is all on Chapter 589. 589:6, that is probably one of the best provisions there is in this whole code, "Loitering statute" and it just sort of rounds out our current RSA 594:2. It is a good tool to the law enforcement and I'm really glad this section is included in the code.

CHAIRMAN ZACHOS: Any questions of members of the Committee of Chief Reynolds?

Thank you, Chief. Anyone else wish to be heard on this chapter; 589?

MR. HAMLIN: I am David Hamlin from Concord; Civil Liberties Union and with regard to 589:1, which is Riot, and 589:2, Disorderly Conduct; we are extremely concerned with the language of these two sections. We certainly don't argue with the intent of either one of these, but, we are asking you to inform us what is "tumultuous behavior" which, could be everything from a football game to an actual riot. We hope that both of these sections would be reviewed and rewritten with a stricter definition. You have already seen some examples of other definitions and phrases such as "unreasonable noise." "obstructing vehicular or pedestrian traffic" what constitutes "obstruction?" again the intent of both of these laws is obvious; the question is the broad latitude that is being provided here. We hope these laws will be rewritten to provide a clearer definition.

CHAIRMAN ZACHOS: How could we possibly define more clearer--at least in my mind "unreasonable noise" there is no definition--I don't see how we could come up with a better one.

MR. HAMLIN: There are two possibilities; one is to remove the phrase and barring radical definitions, that should be done. And a more adequate provision for the phrase, "disorderly" is needed. If you clearly have a situation where the public is somehow threatened, then I think the "unreasonable" definition would be a kind of extension of the threat. However, I don't think "unreasonable noise" in of itself is a valid reason for arrest in most cases and part of the problem with both is the way it is written and it is kind of a threat against free assembly. Under one of the definitions you are liable to be told by an officer to move--under the broad kind of definition you have here--for example, a peace demonstration could be construed to be a riot or disturbing the peace and I hope that is not the intent of the

law, and we would like that possibly be removed. 589:9, which is the "Violation of Privacy". We wholeheartedly applaud, in an age where electronics surveillance of various types seems to be on the upswing, we are very gratified to find this section. We would like to have a short section specifically designed to include legitimate political activities. I think essentially its speaks for itself. We are just concerned, in addition to safeguarding general surveillance, to have one that prevents the surveillance of political activity assuming, of course, it's within legitimate bounds.

CHAIRMAN ZACHOS: Where would you do that and how would you do it?

MR. HAMLIN: Well, you could add a provision--

CHAIRMAN ZACHOS: It's seems to be princibly written broad and as it says: "you install or use in any private place, any device for observing, etc., etc.-- for an event in such a place;" now, if you start making something specific about political assemblies,--that for you are suggesting, that you make a specific prohibition of eavesdropping of political activities, wouldn't that get very specific?

MR. HAMLIN: I don't think it does, I think the question here is what happens outside this book, clearly what is beginning to happen, to infringe on political groups subjected to surveillance.

CHAIRMAN ZACHOS: Clearly it is a misdemeanor under this--if eavesdropping is done without the consent of you and me discussing politics or anything else. It seems to me this is a clear violation of the statute. I don't think a prohibition against any type of activity adds anything to the statute.

MR. HAMLIN: Well, our concern has been the evidence of this and we see it as a growing problem and specific prohibitions may help.

REP. RECORD: Consider this: You have a peace parade and the television pictures

are broadcast throughout the country, is this a violation of privacy?

MR. HAMLIN: Not presuming that the peace parade is on public property, of course not.

REP. RECORD: Well, suppose it is a private place?

MR. HAMLIN: Well, assuming the television media had not been invited it could be asked to leave and conceivably be read as a violation.

CHAIRMAN ZACHOS: That is not really the concern we have in mind however.

REP. HEALY: You have discussed your thoughts on several sections of this particular chapter, I was wondering whether or not you had amendments conveying your thoughts covering the subject matter you have suggested to the committee?

MR. HAMLIN: I could try--I think that the problem on 581 and 2, "riot and disorderly conduct" needs subjective definition of terms. I would remove clearly having language such as "unreasonableness." "Abusive language" is another, there is some, for example, some language which is clearly abusive--others, in a kind of a shadow. The exclusions has to be read into this section very, very carefully and look to the times and remove the ambiguity.

REP. HEALY: In reply, as a question of the thought that was expressed to you by the Chairman, your in the area of great difficulty and it would be a difficult job to cover that matter; and as long as you have the idea, I thought you could submit an amendment covering those ideas so we would have something in front of us for our consideration.

CHAIRMAN ZACHOS: I think Rep. Healy is pointing out that it is a very serious and difficult problem for us to use--in other words, it would be a great help to have something to submit instead of coming and making suggestions of what you consider to be weaknesses in the statute. If you have a specific suggestion how that statute might be improved, or might be improved at least something that

would fit with our ideas. I think that is what Dan is suggesting. If you submit in writing to us your suggested changes it would be helpful when we go into executive sessions to have them right in front of us, and it says the message you are trying to get across.

MR. HAMLIN: Well, without having prepared that kind of thing, I would remove the word, "tumultuous." I think in fact, "...engages in violent conduct..." it seems to me that that is clearly broad enough to suggest "tumultuous" and something that is violent.

SENATOR KOROMILAS: I was going to ask you about--talking in respect to 589:2, talking about abusive or obscene language, I take it you would like to take out this: (c) on page 99--589:2, paragraph (c)? The subject paragraph, I think you would like to remove the "abusive" and leave obscene in there; is that correct?

MR. HAMLIN: I am not sure--in a specific sense it would work this way. Make a kind of subjective decision about this. One individual's definition of obscene is not another's, and it seems to me--I am not sure; this exclusion other than the removal of that particular--that particular phrase and perhaps in effect you have given over to harassment, or obscene, or abusive language. Now, it seems to me the "harassment" section here, among others, it makes provisions for repeated communications. Perhaps that is a key to it. The repetition of the phrase or the gesture or whatever. I just don't think that in this area you can find precise definitions to really work with.

SENATOR KOROMILAS: Don't you think obscene is quite definitive?

MR. HAMLIN: No, I don't think so.

SENATOR KOROMILAS: Do you imagine "abusive" is less--even less definitive?

MR. HAMLIN: Yes.

SENATOR KOROMILAS: Can you give us an example?

MR. HAMLIN: I don't quite understand your meaning. Well, perhaps the way to explain is "young and old people." Young people's language has fully opened up considerably. Whereas, the old generation language has not a number of phrases that the young people use. They don't think that is obscene where the older generation does find the phrase obscene. Would you like me to be more specific?

CHAIRMAN ZACHOS: No, it's an ending comment.

REP. RECORD: In other words, you are saying that to call the police "pigs" is not right for the older generation and is abusive, but the young people think it's okay?

MR. HAMLIN: I would not be that general, what I am getting at is there is a different value on that phrase for the two parts of the two different generations. Some young people don't find it offensive to call the police "pig" as an abusive phrase--some do.

REP. RECORD: They weren't brought up very well.

REP. BRUNGOT: I would like to say to Mr. Hamlin you're not clear--effective--in saying what the older or the younger generation, some of it is obscene and abusive and I have never condoned.

MR. HAMLIN: I don't mean to generalize, I was trying to point out a trend that is opening up of our language of the younger generation. Certainly, most all youngsters use of a reference to a policeman is good.

REP. BRUNGOT: Don't you think it's about time we taught the younger generation?

MR. HAMLIN: Well, I have no answer for that question.

CHAIRMAN ZACHOS: Good, that is the best answer you can give. Any further questions on section 589?

MR. WHITNEY: Herbert Whitney, State Fire Marshall. I am interested in 589:3,

Public False Alarms. As to the possibility of a clearer definition when it comes to an "official." As it reads: "A person is guilty of a misdemeanor if he purposely communicates to an official..." In this case, the definition of an "official" could mean the superintendent of the streets or of the highway department, and there have been some cases where we have had the bomb calls come in that the people that had them said, "thank you very much" then hung up; that is the end of it. I just wonder if this should be clarified a little more? As to the "voluntary fire department" it would be suggested that we consider dropping the word "voluntary" and just saying any fire department. If you are going to stress the "voluntary department" that would leave out people in Rochester and Kensington and so forth. I am not going to say you are leaving them out, but it would be misconstrued as that.

CHAIRMAN ZACHOS: On that? Maybe I am reading that chapter wrong, but I thought the word "official" modified the noun fire department. Now, is that the way the staff interprets that--I thought that meant official fire department or volunteer fire department. I don't interpret what you are asking for on clarification. You have brought it to our attention there could be--let me ask the staff to make a note of that and we can check that out. Any further questions?

MR. WHITNEY: In answer to the Senator's question, I hope you realize there are groups that require a bomb scare in order to join the club. That is along your lines.

REP. HEALY: Do I understand you clearly; you fear that 589:3 does not cover a permanent fire department?

MR. WHITNEY: Yes.

REP. HEALY: You would not consider "other government agencies that deals with emergencies involving danger to life or property a false report concerning a

fire, or other catastrophies..." knowing such report to be false? Doesn't that cover--don't you think that covers it?

CHIEF SWEENEY: No. Only from the standpoint that some of these calls have been going to other departments. It seems you could clarify a little bit more--it might be well.

REP. HEALY: Okay, thank you.

REP. PALMER: I would like to know if a person would be guilty, if he called the fire department, and the undertaker, and the police department and all of these emergency outfits, would he be given one misdemeanor or does one misdemeanor cover all that was called?

MR. WHITNEY: Not being an attorney, I would in one sense hope it would be under every one of the calls.

CHAIRMAN ZACHOS: With all due respect to the Chief Justice of the bench in ruling our case, we consider that three offenses rather than one.

REP. PALMER: Where is that spelled out?

CHAIRMAN ZACHOS: I don't know if you will find it spelled out. Its says "false report." The report to the chief of police, that is a report; and after I get through calling there I pick up the fire department--it might be the same false alarm, but to two individuals.

REP. PALMER: Just triple shock to the victim.

CHAIRMAN ZACHOS: Any further questions--any further questions on chapter 589? We will proceed to chapter 590. Public Indecency. Anyone wish to be heard on chapter 590?

MR. KING: Tom King from Manchester. 590:1 is a good law as essentially it doesn't have to be proven in a public place. It says here in the "comments" New York has a similar. It says in a public place in their law, but our interpretation, I want to be corrected, it can happen in a private place;

and as far as prostitution in here, if a person is arrested for prostitution two or three times in the course of one year and under the old law if they get arrested twice in one year it would become a felony. The old law says so, and I don't see why this should be changed from a felony. The "adultery" should remain a felony.

CHAIRMAN ZACHOS: Any questions of Mr. King by members of the Committee? Thank you very much. Anyone else wish to be heard on chapter 590? If not, we will proceed to chapter 591.

CHIEF REYNOLDS: I would like to make reference to chapter 591:1, I & II. Namely, Misuse of Flag and Wrongful Display of Flag. It takes the current misuse which would cover all the factors included in the new code which provided a penalty of \$1000 or six months in jail as a violation against the flag and makes it a violation or a misdemeanor in the new code. I think at this point in history this is not a very wise move. I don't think on one hand we can make everybody respect the flag, but on the other hand, I don't think we have to put up with overt acts which reflect on the flag and I think this should be considered a misdemeanor, since the new misdemeanor on the statute does allow a fairly heavy fine and up to a year in jail. Wrongful Display of Flag also should be continued as a misdemeanor.

CHAIRMAN ZACHOS: Any questions of Chief Reynolds by members of the Committee?

SENATOR CHANDLER: Does this proposed new chapter repeal the law that was just past at the last session?

CHAIRMAN ZACHOS: Wrongful Display of Flag and Misuse of Flag replaces RSA 573:1 through 9, and I am not sure which one was passed at the last session. Perhaps Bill Deachman could aid our staff.

MR. DEACHMAN: Senator Chandler, none of these '69 laws were incorporated in here. In other words, when this report was submitted to the Legislature,

the '69 session was still in session. Therefore, it doesn't reflect the '69 law.

SENATOR CHANDLER: So the intent for this committee of the additional law that was passed in '69; will have to incorporate into the code or repeal it? Well, it says here that this is--the following section is a continuation of the offenses defined in RSA chapter 573. What is continuing in that is meant in addition to those that were repealed are these which were in the new statute?

MR. DEACHMAN: When the law was written, the '69 session of the Legislature--

SENATOR CHANDLER: I understand that, what you just said, but, what does this mean--this continuation in the middle of the page under comments--in the middle of the page where it says: "this and the following section are a continuation of the offenses...."

MR. DEACHMAN: Actually, you add the old 573 to this.

SENATOR CHANDLER: These are added to it, not substituted?

MR. DEACHMAN: Yes.

CHAIRMAN ZACHOS: I think the way I interpret this is that it means that in the eyes of the people that were writing this, they were including by these words most of the violations in the present statute.

SENATOR CHANDLER: Well, I think it might mean that; I couldn't tell for sure.

CHAIRMAN ZACHOS: I think we have to check that out.

CHIEF REYNOLDS: According to the code in the back, it replaces these.

REP. RECORD: How do you feel about the theft of flags?

CHIEF REYNOLDS: I think the theft of flag obviously under one statute could be a larceny, and I think probably the larceny statute could handle it. On the other hand, I understand there is some thoughts about having a specific statute for that purpose and it maybe a good idea in view of the present rash

of flag thefts turning up; and it is more serious than the average larceny.

CHAIRMAN ZACHOS: Any further questions?

SENATOR CHANDLER: In your opinion, isn't that quite a drastic change where on the one hand we had a law which provided for a \$1000 fine, and on the other hand the new proposal to make it a violation. In your mind isn't that quite a drastic change?

CHIEF REYNOLDS: Certainly. A violation provides a fine of \$200 and no sentence to jail. And, of course, there was a provision for confinement--under the current statute there is a provision for confinement.

SENATOR ENGLISH: Under the larceny statute, isn't that broad enough to scale that; to include special penalty in connection with flags? Possibly I am not familiar with the law, but, you mean as larceny is put in categories which would in some way--the value of the flag, we might say \$25; will that determine a large measure the penalty?

CHIEF REYNOLDS: Perhaps I can answer your question in the manner of the current RSA. Anytime there seemed to be a particular problem, there was a statute generally passed that would handle that specific problem. For instance, the "wilful concealment of merchandise". That was to handle a specific problem. That has been done on "inhaling toxic vapors" every specific problem. I see no reason why under the larceny statute there couldn't be a specific chapter or a paragraph to handle this specific problem. But, of course, this could be under the judgement of larceny or under the flag section.

SENATOR ENGLISH: I don't quite understand your point. Let's say, the flag is worth \$25 and some other object worth \$200 is stolen, according to the position to levy the same fine in both cases, regardless of the value or they, in your opinion, are tied down to the article in taking?

CHIEF REYNOLDS: Up to a \$100 they are tied down, over a hundred it would be up

to the consideration of the Court.

SENATOR MASON: I have a question which probably should be directed to the Chair. There is nothing in here relative to the sale of the U.S. Flag or the sale of the State of New Hampshire Flag and I feel very strongly we should have definite laws in these two areas in the use of either.

CHIEF REYNOLDS: Well, we have existing RSA's and we are repealling those.

CHAIRMAN ZACHOS: To this particular case we are not repealling those.

SENATOR MASON: As long as they're not being repealed, this would be a good place to incorporate them.

CHAIRMAN ZACHOS: Any further questions of Chief Reynolds? Thank you, Chief.

MR. ASH: My name is Herbert Ash, Grafton County Sheriff. If I understand it, in the present 591:1, Misuse of Flag. A person is guilty of a violation; is that what this particular codification represents now?

CHAIRMAN ZACHOS: Right.

SHERIFF ASH: And, if I understand it, the violation within itself is what is different and which would constitute a misdemeanor or a felony?

CHAIRMAN ZACHOS: Right.

SHERIFF ASH: Maybe I'm a little more patriotic than I should be, but I feel-- it is my thinking anyway--rather than making it a violation, it should be a misdemeanor. In my way of thinking, where our flag which means so much to us people in this country, where I have seen real flagrant--you know--misuse of the flag; where they have taken the flag and painted a swastika on it, four letter words on it and hung them up in dormitories. Hung them from a window or on lawns and worn them on the seat of their trousers. I just don't think this action, within itself, that they haven't had some thought and sometimes preparations in doing it. And, where these violators knowingly and wilfully having to some effort to disgrace and degrade the flag and give little or no consideration, they should be guilty of more than a violation.

CHAIRMAN ZACHOS: Any questions of Sheriff Ash by the Committee? Thank you Sheriff.

MR. KING: Thomas King from Manchester. I totally agree that the misuse or wrongful display of the flag should be a misdemeanor. The average person doesn't abuse a flag and I think underlining it all that a person desecrates it, he does it for a reason whether it is political, it causes trouble and that person is either doing it to draw attention or something. Alternately disgracing a flag in a public place, he can cause a riot or all kinds of trouble and shouldn't be treated as it is. If he wants to pay the consequences of recognition or publicity it should be at least a misdemeanor; the violation is totally wrong.

REP. BRUNGOT: I think it should be a fine.

MR. KING: Well, a misdemeanor includes a fine and imprisonment.

SENATOR CHANDLER: The present law on the books now; isn't that a \$1000 fine and that should be retained the way it is?

MR. KING: A \$1000 fine or 30 days or six months--I think it's ridiculous to go from a \$1000 down to a hundred.

REP. BRUNGOT: Don't you think most of them that do these things, they're not worth a hundred pennies--so, to give them a hundred dollar fine would be all they're worth.

MR. KING: Some people do things not because they are good or bad or because of any misunderstanding or because it may be proper or because it may be not. It doesn't make any difference, it should be changed--the violation and not be treated lightly.

CHAIRMAN ZACHOS: Any further questions of Mr. King by members of the Committee?

SENATOR KOROMILAS: I wonder if the Chief Justice could tell us why we have III in that particular section; III in 591?

CHIEF JUSTICE KENISON: Well, that is to prevent commercialization or exportation

by someone of the flag. That is, some people try to use the flag for commercial profit. I don't know if I can think of a good example at the moment. I believe part of that was in the existing statute. While I am on my feet, may I say something about this section?

CHAIRMAN ZACHOS: You most certainly may.

CHIEF JUSTICE KENISON: We had this prior to the '69 session and, if you will recall, most of these offenses against the flag has been of recent. I mean they have been within the last six or seven months. I am sure if we had experienced this when we made chapter 591, I can say without fear of contradiction that we would not have made it a violation. In other words, I agree it shouldn't be a violation and I think we are fighting about something we all agree with.

CHAIRMAN ZACHOS: Thank you, sir.

SENATOR ENGLISH: I am concerned if the flag is used for commercial purposes, I don't know if that is covered by the code or not. It is not unusual in some places to put a flag along the road to attract attention.

MR. DEACHMAN: It specifically says in the old 573:3 "for advertising purposes."

SENATOR ENGLISH: Constitutes what?

MR. DEACHMAN: "No person shall expose, or cause to be exposed, to public view, manufacture, sell, expose for sale, give away, or have in possession for sale or to give away or for use for any purpose, any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached, or otherwise placed a representation of any such flag, standard, color, or ensign, to advertise, call attention to, decorate, mark, or distinguish the article or substance."

SENATOR ENGLISH: That makes it fairly clear, but there is no question in my

mind that it is used for commercial purposes and probably it's not improper in the way it's actually used.

CHAIRMAN ZACHOS: Any further questions? Any further testimony on chapter 591?

MR. HAMLIN: David Hamlin from Concord, Civil Liberties Union and probably unofficial lightning rod. Our complaint with this section centers around your Roman numeral I, II and IV. We have no feelings about Roman numeral III and V. With I; II; IV, there is a question of ambiguity. We would ask-- for example, if under mutilate or defile--if an individual leaves the flag out overnight under rain; is he subject to prosecution? That is not the real problem for us, but it is a question of free speech. If a person wants to express himself by using the flag, does he have the right to do so as protected by symbolic free speech, and we would urge the removal of I, II and IV.

CHAIRMAN ZACHOS: Any members of the Committee have any questions?

REP. SAYER: I would like to know if this gentleman considers this flag--the display of an American flag with a broken Christian cross in violation or unpatriotic display?

CHAIRMAN ZACHOS: Would it be a violation of this chapter?

REP. SAYER: Yes, a violation of this chapter?

MR. HAMLIN: Yes, as it is presently written, it would be a violation.

REP. SAYER: Would it be your intention to change it?

MR. HAMLIN: No, it would not.

CHAIRMAN ZACHOS: Any further questions?

REP. BRUNGOT: How about Loeb in Manchester selling flag pins; would that be a violation?

MR. HAMLIN: My understanding of paragraph III; it would be. Perhaps I can be corrected in that area.

SENATOR ENGLISH: It seems to me that the entire Gulf Corporation could be liable because they had car decal flags they gave away for a full year a year or so ago. It does strike me as a little broad.

CHAIRMAN ZACHOS: Any further questions of Mr. Hamlin? Thank you, Mr. Hamlin. Anything further on chapter 591? All right, we'll go to chapter 592. Gambling Offenses.

CHIEF BALL: I only wish to say that I concur with my brother about the flag. On Lotteries, 592:1, I would like to offer for your thoughts, because I don't have the answer, but we have this problem of lotteries. We have both legal and illegal lotteries; both. Perhaps some greater brains than I can explain somehow how some lotteries are performed by certain institutions; whether they are legalized or something, here. We have churches and other benefits running lotteries concurrently and they're actually unlawful. Of course, we have others that run lotteries that are arrested and there is ambiguity in it.

CHAIRMAN ZACHOS: Well, there has been legislation submitted previously. I think there is some in the works right now; I think someone introduced just such a statute.

CHIEF BALL: Well, what I want to know is if religious organizations are exempt from the lottery--there is a prohibition against lotteries for nonprofit--

CHAIRMAN ZACHOS: Such as churches and schools?

CHIEF BALL: Well, I want to put you on the line.

CHAIRMAN ZACHOS: Don't tell us just to consider it; one of the purposes we are here is to get a feeling out of the people. We know you're dilemma.

CHIEF BALL: Well, we can't do it honestly as we all know it everyday and it is ignored.

CHAIRMAN ZACHOS: Based with that situation, are you suggesting to this committee that we "fish or cut bait?" We either make it enforced or we take the other positions; let's exempt the lottery to such organizations as churches

and schools?

CHIEF BALL: Yes, I don't think there is any public uproar on lotteries, even such as beano. Our control by the state are bound by laws, etc. and they don't get out of hand. If a law were drawn up which also exempted these commercial lotteries that are going on it would certainly be doing a service to the police departments if such a law could be drafted and exempt nonprofit organizations and again it wouldn't get out of hand. I don't know what the law could be.

CHAIRMAN ZACHOS: Any questions of Chief Ball?

REP. BRUMMER: Sir, doesn't it more or less make it legal if these lotteries have donations on it?

CHIEF BALL: No, it's based on those factors of taking a chance for a price, and I think that is how it goes--something like that--it is still a lottery; taking a chance or not and I don't think in my own mind this would be fair. I think the factors are there, the stipulations; to specify exactly what would be proper as you have in beano. If you have specific things that sort of could be run for nonprofit organizations, it would greatly help us in the community and it does create a dilemma for us.

REP. BRUMMER: Any cases you know of where a charitable organization or charitable institution that was brought to Court for prosecution?

CHIEF BALL: No, as I say, we all are forced to look the other way. I don't say we are having an uproar and are rushing in where they are running a lottery. On the other hand, it could become a serious problem in how it is handled. In fact, we have one in our State. But, they have to be controlled and it is desired from a police standpoint that it be spelled out specifically.

REP. PALMER: If you know of a lottery or gambling, can you make a prosecution if you first receive a complaint?

CHIEF BALL: Oh yes, we have to go through certain judicial procedures, I have

to get evidence--the facts.

REP. PALMER: So, you have to have a person make a complaint?

CHAIRMAN ZACHOS: He doesn't need a third party complaint.

REP. HEALY: I just want to clarify something. I imagine when you say--this is just a suggestion; because of difficulties and the nature of things where they are ordinarily run by members of that particular church or charitable organization, you rather see it legalized rather than have it the way it is today. However, I suppose you would in such a law want a precaution, as someone could come in and do the job for them. It's all right if members--it's more or less regulated and run properly. Sometimes, on occasions, I remember there was some years ago some members of some organizations had people come in and put on lotteries or benefits for charitable organizations and they more or less abused the privileges. If we had precautions within it--pretty well spelled out then it would give us the power to do what should be done.

SENATOR MASON: Chief, all of these definitions of a lottery is specifically against the person who is selling, do you think in the interest of fair play we should also put something in here to prohibit the purpose so you could get at the buyer?

CHIEF BALL: Well, that would be biting off quite a hunk.

SENATOR MASON: Without the buyer there would be no lottery. If he receives equally; I think he is more guilty. A person that is selling is providing a service and there is no question he does share the guilt.

CHAIRMAN ZACHOS: Any further questions of Chief Ball? Anyone else wish to be heard on this chapter?

CHIEF CARLSON: My name is Walter Carlson, Chief of Police, Concord, New Hampshire. I don't very often disagree with Chief Ball, but I am going to today. I think the lottery laws are fairly well spelled out and fairly well controlled

in the State of New Hampshire. I would be against any drastic changes that in effect legalized the lotteries. I would agree there are perhaps charitable organizations and patriotic organizations that run lotteries, but, by in large, there is no great big advertizing in the papers. You don't see professionals coming in. I believe, you are aware that Massachusetts has wrestled with this problem of legalizing beano and they still haven't seen fit to do so. We still prosecute flagrant offenders when they run big adds in the papers advertizing this lottery or a deer pool or something. I think we have enough gambling without legalizing it more and I am sure, since the State has gone into the business, we have made some modifications in the area. I think we should--well, we have to make the change of educating the public that this is not a good way to raise money. It is done, undoubtedly, for profits but I seem to think it's fairly well under control. I am not saying there is not a lottery in the City. But, there is not flagrant advertizing--not the wide spread use of this type of money raising that you would find if it were legalized. I am going to take an opposite stand and retain the law as it is on the books.

REP. RECORD: Would it be possible for an individual to make a complaint against some of these organizations and bring it to the full foreground and on that basis what would be done to that organization?

CHIEF CARLSON: If you came to me and said so and so was running a lottery--

REP. RECORD: --Really made a big noise about it.

CHIEF CARLSON: Sign the complaint and we will prosecute.

CHAIRMAN ZACHOS: You wouldn't have any other choice.

CHIEF CARLSON: I wouldn't have any other choice.

REP. BRUMMER: Chief Carlson, in your viewpoint then, would you think a misdemeanor is too much for this lottery statute or would you prefer a violation?

CHIEF CARLSON: I prefer to keep it in the misdemeanor category.

REP. LAGASSE: Do you think all these charitable organizations should be prevented--any of these lotteries that are continuing, such as beano or any of those then?

CHIEF CARLSON: They should be prevented from having these because they are operating against the law.

REP. LAGASSE: Beano is legal.

CHIEF CARLSON: Well, I think other lotteries then. I think they should be discouraged and I think some people should speak up; let's find a legal way of raising the money. Don't misunderstand, I don't want to go on a "witch hunt" around back doors of fish and game clubs; wherever it might be to find a little illegal lottery. If adds come out in the paper for such and such then we take action; maybe in the form of a warning the first time. I have made some good enemies on this.

SENATOR CHANDLER: You testified you preferred to leave the law as it is?

CHIEF CARLSON: Well, I'm not talking about changes, it was primarily; it was Chief Ball's statement to legalize within certain limits.

SENATOR CHANDLER: In other words, you would be opposed to the proposals that the committee has proposed?

CHIEF CARLSON: No.

CHAIRMAN ZACHOS: If we left it a misdemeanor, you would be in favor of chapter 592?

CHIEF CARLSON: Without amending it to Chief Ball's recommendation.

CHAIRMAN ZACHOS: Chapter 592 proposes no changes. It leaves the proposals to chapter 577, RSA as is. Anyone wish to be heard either for or against such a proposal; this would be the proper time. (no response) Chapter 593. Any testimony to be given on chapter 593? (no response) Chapter 594. Is exactly the same situation; it doesn't change. It is transferring RSA chapter 589 to this

chapter. Any comments or testimony to be given on chapter 594? (no response) Chapter 595, dealing with Obscene Matters. Transfer RSA Chapter 571-A (1967 supp.) to this Chapter. The present highly unsettled state of constitutional law governing this subject has made it inexpedient for the Commission to revise RSA Chapter 571-A (1967 supp.). Anyone wish to be heard either for or against such a proposal? (no response) Chapter 607, Sentences.

CHIEF SWEENEY: Mr. Chairman, three sections. First, chapter 607:2, II. It appears to remove discretions from the judges mind, as well as makes sentences, and I think it would be well to retain judicial discretion in that area. Chapter 607:4, II, allows a provision for a defendant being sentenced to admit to any other crime and circumvent any pending prosecution elsewhere which might be underway for this crime, and, theoretically, a man being tried for burglary who has also committed murder and is under indictment for it in another county would be able to be sentenced for burglary and preclude any trial for murder; and I would suggest this section to be changed by providing for the County Attorney when the person comes in to file information and allow the additional charge as well.

CHAIRMAN ZACHOS: 607:4 Roman Numeral II?

CHIEF SWEENEY: Yes, page 119. "...The court shall also ask the defendant if there are any other offenses which he wishes to be taken into account in determining his sentence. If the defendant indicates that there are, the county attorney shall be notified and afforded an opportunity to be heard. If, after any such hearing, the court takes into account such other offenses as are disclosed, the record shall so state and the sentence imposed shall bar the prosecution or conviction in this state of the person sentenced for any such admitted crimes."

CHAIRMAN ZACHOS: You don't truthfully think that a defendant appearing before a judge or a person on a burglary charge in the course of a presentence, would

indicate: "yes, I also committed a murder three weeks ago and I would like to have that considered in the sentence." You think that would be included in the burglary sentence?

CHIEF SWEENEY: I feel that the judge would have the power to do that.

CHAIRMAN ZACHOS: That isn't my question.

CHIEF SWEENEY: I am often surprised at what happens in Court.

CHAIRMAN ZACHOS: Well, so am I. But, well--okay--

CHIEF SWEENEY: --That is an extreme, but what about grand larceny by armed robbery or what have you?

CHAIRMAN ZACHOS: The proper way to do this is that the county file information that the person wishes to plead guilty to that additional charge. That is possible under this procedure.

CHIEF SWEENEY: It doesn't specify that it should be done and I think it should be specific. My third comment is on 607. When we are changing the records and doing away with records and so forth, and at this point of time, it seems everyone that commits a crime is sick, or depressed, or requires psychiatric treatments; and society doesn't provide for the person that is just plain ornery. Now, in effect, we don't worry about getting a criminal, but just if you behave yourself for the next five years then it can be wiped off the record. I think we are always a little bit liberal when we start banging about this business of changing records.

CHAIRMAN ZACHOS: You think requiring a person to have a clean record for five years is: "banging it about?"

CHIEF SWEENEY: I do.

CHAIRMAN ZACHOS: Do you believe in the concept of pardons?

CHIEF SWEENEY: Certainly, but the concept that is provided here is different.

CHAIRMAN ZACHOS: In what way?

CHIEF SWEENEY: If he applies before the Governor and Council it is perfectly

legitimate and a legal procedure under the present law.

CHAIRMAN ZACHOS: You don't want to make it easier?

SENATOR ENGLISH: Extending that ten years, does that make it better for him?

CHIEF SWEENEY: I would say extending it ten years would be better.

SENATOR ENGLISH: I had an example of a man with an absolute clean record for thirty years during the war, he was a "lookout," for a bank gang thirty years before, and apparently it was staying on the record. But, ten years--

CHIEF SWEENEY: I have no quarrel with ten years or five years, it is the number of crimes that we never detect.

SENATOR CHANDLER: What you really object to is that it is somewhat kind of an automatic thing that at the end of five years he has to go through a process.

CHIEF SWEENEY: He has to apply to a Court to earn an order.

SENATOR CHANDLER: It wouldn't be automatic.

CHIEF SWEENEY: But, it's quite possible, in fact probable, he would have a different judge that is not familiar with the case, and as a case with the pardon there aren't any procedures to come in and oppose this thing.

SENATOR KOROMILAS: If it's discretionary with the Court to erase, say a misdemeanor; forget about felonies, do you have a problem with that; if it is strictly up to the justice?

CHIEF SWEENEY: I think we have a good procedure as presently allowed and there is no need for liberalization of the procedures.

SENATOR KOROMILAS: You think that request should go before the Governor's office?

CHIEF SWEENEY: Yes.

REP. BRUNGOT: I just got a case of someone they have judged with a misdemeanor, it was unfortunate, he was only 22 years old. If he was willing to enlist in the Army, that would be against him; wouldn't it?

CHIEF SWEENEY: If he was under probation or at the time under civil custody,

'the military wouldn't take him. As a practical matter, the Courts are usually quite willing to dismiss these things if the person has changed and will have rehabilitation in the Army.

REP. BRUNGOT: It was my suggestion to the young man that he enlist, and he said "I can't" because he was on probation.

CHIEF SWEENEY: They usually dismiss many for the purpose of entering the service.

SENATOR KOROMILAS: What is the theory under which you feel this record should continue forever.

CHIEF SWEENEY: My theory is that I was told when I was brought up that if someone got a criminal record it stayed forever and I don't really feel this was such bad advice, and I think if we continue this trend of liberalization, next it will be down to one year and we will exsponge this thing and nobody will fear a criminal record and it will no longer be a deterrent.

SENATOR KOROMILAS: Aren't you losing sight of rehabilitation?

CHIEF SWEENEY: No, I don't think I am. It's a matter of opinion.

REP. HEALY: Sheriff, would you have any objections if it was confined to the records, say pertaining to certain offenses; would you make a distinction?

CHIEF SWEENEY: I certainly would. As a disorderly conduct record or something of that type. I would feel more inclined to have it exsponge from the record then a more serious crime.

SENATOR KOROMILAS: In a case of a violation--if adopted--not a misdemeanor, felony; but would you have a problem with violations; their exspongement from the record within a period of five years? I am talking about a speeding charge or not stoping at a stop sign--I am talking about that type.

CHIEF SWEENEY: Well, I think in that case that would be difficult to answer, but I think really the motor vehicle department might have some strong feelings on an habitual offender; to have a series of offenses exsponged from the record.

SENATOR CHANDLER: Aren't motor vehicle offenses wiped out after seven years?

CHIEF SWEENEY: As far as financial responsibility is figured, but other than that; they remain.

SENATOR CHANDLER: Do they?

CHIEF SWEENEY: Yes.

CHAIRMAN ZACHOS: Any further questions? Thank you, Chief.

CHIEF BALL: I also want to speak on 607:5. I see here where a man could possibly have two violations and could become a police officer, could become an employee of a bank, or could get into any sensitive position. But, whether or not I see the premise then I agree with it, I think a man who does become released and does earn a living properly he should have some resources. Two years is a little short and I think it's quite essential that we do not erase all the records. There is a great many who come out and are not convicted over again but still ply their trade and I think the value of records, particularly in our business, is to know about the particular persons they're interested in. If we wipe the slate clean, we have no way of apparently knowing whom we are dealing with, and speaking of minor felonies, the class B felony, it would be a rather short period--two and a half maybe less--which means over a period of ten years a man could be convicted two or three times and still get into a sensitive position. It would be extremely difficult to track him because we don't have any records to go on.

SENATOR ENGLISH: How well are reports received from other jurisdictions? In other words, you have a man here in New Hampshire, or in New Mexico or the State of Montana, or other places; do all those records necessarily come in?

CHIEF BALL: We have some, in other words, particularly in my town, many people are coming in, but generally there is a need. On gun permits, I check back and see if there is a felony record or if a man has been convicted and what his need is to carry a concealed weapon.

REP. RECORD: Chief, do you feel that the FBI, for example, would be hindered in obtaining clearances or not getting clearances for individuals in positions of importance if these records were done away with?

CHIEF BALL: Yes, in fact--in other words, if they had no place to check on a conviction. It also puts me in the position where it may be illegal to divulge information. I don't think this is correct. In the case of where a person has behaved himself, who has visible mean of support, there should be a place like the Governor and Council or perhaps a pardon where a Court check could be made of this person to find out if he has indeed lived up to a useful and prominent citizen. I am not fighting this particular aspect of it, this is a good thing; To do it this way, negating everything would do so much harm to our system of justice--disposing of these records as such. Perhaps, in some cases, after a man gets convicted and is released, this man is still committing crimes and we are not able to prove it in court; and perhaps if then he appeals to a commission for a pardon and a check would be made into the background to have it erased, then I think the committee is doing an injustice to the public.

SENATOR ENGLISH: Before, the FBI was mentioned, do they keep a record of felons no matter what State; are we required to report to them?

CHIEF BALL: It's not a requirement to my knowledge, I don't know about the State level. It's not something we do as a matter of course. Of course, if it is serious we send copies to the State and generally they transfer a copy to the FBI.

SENATOR ENGLISH: I'm asking this: If our records were wiped clean by some rule, whether or not the record would still be in Washington?

CHIEF BALL: Perhaps it would be no longer functioning and returned to us. There has to be a cooperation there. I can see this could become a problem, perhaps in the future; perhaps not in the next year or two. I can see the premise on a rehabilitation; I think there are other and better ways for this to be handled.

properly. As far as I'm concerned, it should be struck out; this 607:5.

REP. SAYER: Chief Ball, under Roman numeral VIII "In any application for employment, license, or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?" We are all aware of some credit reporting, and the biggest retail credit corporations maintains and sells for profit; and if a person has obtained through the years a criminal record and there is nothing in this statute that prevents them from selling this or prohibiting them from selling this record after the period of five years. So, if it was annulled it would still be available to the employer to purchase from the credit retail reporting service. Would you say we should have an amendment to preclude any such sale?

CHIEF BALL: Well, you're getting a little out of my field.

REP. SAYER: Well, if this statute was adopted or this code adopted, then after a certain period of time anybody asking for employment could not be asked anything about a sentence. And, if an employer applies through a retailing credit concern to purchase the record they have, there is nothing to prevent the retail credit from selling the record they have compiled through the years which can be obtained by anyone. All they have to do is get the Court records and judgments and convictions and they have that and still report it over a five year period or ten year period. My question is: Should we prevent this from happening by an amendment to this particular section?

CHIEF BALL: Well, I don't think too much of credit records, and I think it's much over done, and the basic premise with these credit records is that they don't have individual checking. I would have those objections--not being made available to the credit or perhaps not allowing them to use this information once there is a pardon, or whatever you want to call it, has been granted. I

don't feel this man should be harassed any longer; if he is living a useful life. I did notice, and Chief Reynolds mentioned, in the paragraph that they asked "Have you ever been arrested or convicted of an offense" and, this is a very valid point, as that wouldn't be fair because many men are arrested but are not convicted.

REP. BRUNGOT: Do you object to a release if he has been a good citizen for five years; why shouldn't his record be clean?

CHIEF BALL: No, I don't object to that; I object that it could not be--well, it could be expunged after a year.

REP. BRUNGOT: If he is on probation?

CHIEF BALL: This is a word of mouth probation--it doesn't measure to much.

REP. BRUNGOT: You're going to increase the case load--these offenses are being done by young people all around us; you are just going to increase the case load of welfare, because they're not going to get jobs.

SENATOR KOROMILAS: Chief, although this is not in the code itself, I have noticed in some of my practice if a person is arrested and is not convicted, and found not guilty for some reason or other, this is never expunged from the record. In other words, if I am accused of a crime and tried and found not guilty, this would always remain on my record. Would you have any objection if we included a section in this particular code to have this type of thing expunged from a person that has been tried and not found guilty. I see no reason why that should appear on his record. What do you think about that?

CHIEF BALL: Well, I have no feelings--on one hand, true, if he is not guilty it shouldn't be held against him.

SENATOR KOROMILAS: I mean expunged from the record.

CHIEF BALL: Right; perhaps eliminated. As a police officer--how can I phrase this properly--I am aware--I have found because of the lack of presentation, not because they haven't committed the crime.

SENATOR KOROMILAS: This is a foreign concept.

CHIEF BALL: There are, really, there are cases I have lost in Court because of my negligence, not because of the fact that the man hasn't committed the crime.

SENATOR KOROMILAS: Well, this is a cardinal rule of jurisprudence, he has to be proved. You may have it on your records because you expected the Court to find him guilty, but I mean if he was not convicted.

CHIEF BALL: Not these here, because these are convictions. I don't give it out to the credit.

CHAIRMAN ZACHOS: You wouldn't object to it?

CHIEF BALL: I wouldn't devulge it.

CHAIRMAN ZACHOS: I mean erasing it from the records.

CHIEF BALL: Which records are you going to erase?

CHAIRMAN ZACHOS: Your records.

SENATOR KOROMILAS: It originated with you.

CHIEF BALL: Well--I am getting boxed in, and perhaps deservedly so. The record at hand, it might indicate he was only arrested and not convicted.

CHAIRMAN ZACHOS: It might tell you the Chief has it out for him. It's possible isn't it?

CHIEF BALL: Absolutely. If so, I would be against it.

CHAIRMAN ZACHOS: Well, we can't write a law only to apply to Londonderry.

SENATOR KOROMILAS: I am just asking the question if we did include a section to exponge this if he was arrested and found not guilty by a competent Court. Would you have an objection to an added section to do it--require you to do it, or the police to do it.

CHIEF BALL: The best answer I could give is that I would not very much agree with you.

SENATOR CHANDLER: Perhaps you conceive a case where a man has been arrested

and found not guilty, in fact, exonerated him, he would want something permanent to show he had been found not guilty.

CHIEF BALL: This is possible if it is thrown up in his face.

SENATOR CHANDLER: He may wish to have it remove completely from the Court records. Or, he has been arrested and found guilty and then have everything wiped out in case he was charged again in the future. Tried and again he could maintain there had been no record of any previous trial.

CHAIRMAN ZACHOS: Roman numeral VII at the top of page 21 provides for just that proposition. The Court issues, if he wants one, a certificate to null the record of conviction. So, if I have got it in my safe deposit box, and I was arrested, I can either deny it or answer in the affirmative and show him my certificate from the Court.

SENATOR CHANDLER: He would have a certificate.

CHAIRMAN ZACHOS: It would be up to him to disclose it.

SENATOR KOROMILAS: What I was talking about was the police record. I am not suggesting for a moment to have it off the Court record, this is a card they have on people in the police station.

SENATOR CHANDLER: Isn't the Court record a public record?

SENATOR KOROMILAS: Yes.

CHIEF BALL: My private record is not accessible to the public and shouldn't be. I have to have some misgivings about that in line with our duty. It shouldn't be abused but it shouldn't be made public, but I do think we should have something even though he was found not guilty. I don't think it should be abused.

CHAIRMAN ZACHOS: Any further questions of Chief Ball? Thank you, Chief.

REP. COCHRANE: My remark is going to be quite general. But members of the committee, I have been involved in the correctional field for some twenty years, and I'd like to point something out that has not been pointed out by anybody yet.

This record collection is a serious thing. I don't think this record should be easily or quickly disposed of. But, I would like the committee to consider this: In many cases, a position of any--well, let's say usually in a position of any responsibility, there has to be a bond and no bonding agency will bond anybody with a record--whether he has a pardon or not. It seems to me that it is a mockery when you say a person who serves a sentence has paid his debt to society, and then comes out and it pursues him the rest of his life--regardless if he has a pardon or not. I don't say that you should immediately get rid of his record. You have got to have the record. I certainly do say this: very definitely, most positions of any responsibility. If you have any concern about that, and you believe at all in rehabilitation--and I don't believe for a minute everybody can be rehabilitated--there are certain percentages throughout the world, I can say practically, certain percentages you can't do anything with and institution would be much better for them--lock these people up, and give the other people a chance. Well, this is idealism and it costs money. The state hasn't anywhere near that ideal as the federal system where they do segregate people better. They do train them better and I can give you a case of a man--now, this is a real case, who had a long record of stealing and he went to Atlanta to be an electrician. He was finally hired by the Waldorf Astoria and rose to the top and earns a very good living. It's as simple as that. You're eliminating a chance in many cases for a man to advance and make a living. Now, I don't say what the time limit should be; I think that should be up to the Committee.

REP. RECORD: Representative, if you were the owner and ran a bonding company, and you are going to put your stockholders, or your own money, up to grant a person his good faith, you really should know those facts; shouldn't you? You speak of a percentage of people that will go straight and then there are a certain percentage and if you were setting a bond on them wouldn't you want to

know that? If he was convicted of a certain crime and if you overlooked that or there was no record for you to find out, you're not going to earn on your investment?

REP. COCHRANE: Well, I'd like to suggest this to you: there are plenty of people who have no record at all that are capable of doing things. That is human nature. I don't think this should be an excuse for the rest of a man's life. I don't say everyone should have his record cleared, but I think there should be some consideration of it, because; the real thing that interest that individual is how is he going to get ahead in a competitive society.

CHAIRMAN ZACHOS: Any further questions?

REP. HEALY: As to your position under 607:5. Is the discretionary power put to the Court so broad that it can be abused; is that what your driving at?

REP. COCHRANE: No, I am not saying that. I am just talking in general terms about this report business. Wherever the record is, people can get a hold of that record.

REP. HEALY: I misunderstood you. Do I understand that the record shouldn't be wiped out?

REP. COCHRANE: No, I think it should be wiped out and I think in individual cases there should be a change for the record to be wiped out. I think it is mockery to give a man a pardon and it stays with him in the final analysis as to what happens to that individual as far as employment is concerned in a great many cases.

REP. HEALY: Well, I misunderstood you.

CHAIRMAN ZACHOS: Any further questions of Rep. Cochrane; thank you. Any further testimony on section 607?

MR. KING: 607:3, III. It says here "If a person who is imprisoned in a penal institution is convicted of a felony committed while he was imprisoned or during an escape from imprisonment, the term of imprisonment authorized by

sections 607:2, II, or 607:6 may be added to the portion of the term which remained unserved at the time of the commission of the felony. Otherwise, any sentence of imprisonment imposed on a person who is subject to an undischarged term of imprisonment and any multiple sentences of imprisonment imposed on any person shall be served concurrently." I think you're doing away with the consecutive terms. If he escapes from a state prison, I think you're doing away with the consecutive terms.

CHAIRMAN ZACHOS: On this provision, what position do you take?

MR. KING: I think it should be applied and retained--consecutive terms. On 607:4, I think that perhaps a little more attention should be focused on a person who is found guilty and called in front of a judge and wants to admit prior crimes. I think that it has its good points and may clear up a number of breaks in the city and make the record look wonderful. I think perhaps there is some possibility that a person might get away, unjustly, with twenty or thirty or fifty breaks in our community and we might have just enough evidence to present him before waiting for an opportunity. I think perhaps a little more attention should be given here.

CHAIRMAN ZACHOS: Well, this means that it will be left to the discretion of the Court, in effect, the county will assume protection. It simply says, if he blurts out the fact that he committed three other crimes that he will not be immune to prosecution.

MR. KING: I see some good in that and some bad in it; that is all. And, on Disposition of Certain Records, 607:5, I think the principle and the idea behind this is wonderful and good. Perhaps, the only thing I find wrong is the five year bracket. It might be increased to ten years. On the small ones, the little small crimes. But, if he proves in ten years he has been a good boy, he should get a good conduct certificate. I think five is kind of short for the serious crimes.

SENATOR CHANDLER: What do you think about the two year period?

MR. KING: For that, in the first one where he is sentenced to probation or conditional discharge he can initiate it right away; right? Number one he can ask for it immediately.

REP. ANDREWS: Upon termination of the sentence.

MR. KING: Upon termination of the sentence. I think it's good, and I don't think a guy--he gets a pardon, but gets adverse publicity and all this stuff too. There is one more: 607:7. It says here: as soon as he starts prison he can automatically, if he is a good boy and does his work as he's suppose to in prison, he can be released in one half of his time. I think that is cutting it down kind of short. In other words, as the first one says, he starts out with the minimum of five years or fifteen years and he can get off with half time if he is a good boy and, I don't know if it says if he is released in half time, in the provision, he can be taken back if he doesn't behave--607:7, "Any person sentenced to imprisonment for more than one year under section 607:2 of this chapter whose record of conduct shows that he has faithfully observed all the rules of said prison, and has not been subjected to punishment, may be entitled to release from said prison upon the expiration of one half of the term of his sentence,..." I can't see where this spells out how they're going to get much--it would be the same thing as a violation of parole.

CHAIRMAN ZACHOS: Well, we will have the staff check that out. Any members of the committee have any questions of Mr. King? Thank you, Tom. Any further testimony?

REP. ROBERTS: Representative Roberts, and I will just limit my remarks at the risk of repeating what has been said to VIII.

CHAIRMAN ZACHOS: Which section?

REP. ROBERTS: That was under 607:5, VIII. My particular concern is in the

wording of that particular section that says: "In any application for employment, etc..." I would request that the joint committee look into the possibility of excluding the word, "employment." Or, if you deem it's necessary to leave in the word, "employment" strike out the word, "arrested for" and have it "have you ever been convicted which has not been nullified by a Court?". My reasoning is this: Any individual whoever seeks employment in any major corporation will be asked this question. And, whether or not he is actually employed by that company, that particular information can be shared by any central credit risk, so-called, bureau or credit agency could maintain data on an individual. I believe it is a violation against the individual to maintain that record of his arrest without any explanation of the disposition of that particular case. I speak particularly in reference to a person who might have been convicted, or rather, arrested for some minor offense and conviction was thrown out or never brought to trial and yet a particular piece of information lays within the employer or so-called "credit risk" for his entire lifetime. We have seen to date that there are many misuses of this in business.

CHAIRMAN ZACHOS: Any members of the committee have any questions of Rep. Roberts?

REP. ROBERTS: I would just like to say as far as "licenses, or other civil rights or privileges," I don't have any qualms with that. As far as the word, "employment" that should be either erased or take out the word "arrested".

CHAIRMAN ZACHOS: If you take out the word "employment", doesn't that mean when you go in for employment you can be asked any question--that is what bothers me about it now.

REP. CHANDLER: No.

CHAIRMAN ZACHOS: What is to prevent it.

REP. ROBERTS: The way I understand it, it allows anybody to ask prior to employment, "have you ever been arrested and what for?" Right now.

CHAIRMAN ZACHOS: I think you're right. In my own mind, "have you ever been arrested for" should be stricken. But, you don't think it's all right to leave in "employment?"

MR. ROBERTS: No, as I suggested, it in effect makes it impossible for the employer to ask any question he wants to. Now, maybe that is what you want. I am just indicating the way I feel about it.

CHAIRMAN ZACHOS: Do you feel the employer should be able to ask when you come in to apply for a job, "have you ever been arrested for a crime, or ever been arrested."

REP. ROBERTS: Only if you have been convicted--the only question he can ask is: "have you ever been convicted?"

CHAIRMAN ZACHOS: As a practical matter, does it make any difference? I am a potential employer, and I ask: "Mr. Zachos, have you ever been convicted or ever been arrested and you say, 'under statute so-and-so it says I don't have to answer that'". Aren't you going to politely show me the door?

REP. ROBERTS: I think that if you asked, "have you ever been arrested" I would say, you haven't any right to ask that".

CHAIRMAN ZACHOS: So, I say to you: "under RSA 607:5, VIII you can't ask me that question, wouldn't my reaction be that I don't have to hire you either?

REP. ROBERTS: My answer to that is perhaps a person did not willingly want to answer that. But, I want to go beyond that. For instance, when an employer does that, and he answers, "yes," he has been arrested and it becomes on his application for employment a point of knowledge and was circulated amongst the other groups of employers or so-called credit risk reports. I would say he shouldn't have to answer unless the individual wants to answer it. And, I would like to have the staff protect a person if he filed an application and said he has not been convicted of a crime. No one can come back and say, "yes you have been, you lied on your application" he has a right if asked about a

crime to say, "no" if it has been annulled.

CHAIRMAN ZACHOS: I think on this one we can request that the staff check it out.

REP. ROBERTS: Whether to protect the employee or potential employee--protected to the extent, in fact, find out through public record he was arrested but not convicted; and uses basis to determine whether or not he should be employed and generally know the reason he has been turned down.

REP. RECORD: This brings up another question. If a person was refused a bond because of conviction, and it is wiped off the books--this conviction. This is also on most applications for a lot of jobs, "have you ever had a bond--yes or no--have you ever been refused a bond?" Now, if you have been refused a bond, and this was the reason for that and they go back into the fellow's history; go back ten years to where he had been refused the bond.

REP. BRUMMER: I don't understand why an employer wouldn't have the right to ask the question--any question he wants to. I don't see why one, regardless of any questions of employment, a man under his constitutional right of asking questions to persons seeking employment or any other person.

CHAIRMAN ZACHOS: Why don't we take that question up for executive session; all right, George? I mean the question of constitutional right of the employer or the employee--I would rather defer that question right now.

REP. SAYER: Well, my question is the same and perhaps it should be reserved, but I wondered if this person, Mr. Roberts, who wanted an amendment prohibiting, if they annulled it by the court, prohibiting anyone from reporting or selling that for profit and supplying it to an employer?

REP. ROBERTS: In a case of an annulled?

REP. SAYER: Well, in other words he had a report and it was credited for five years and annulled under the statute by the Court, would you prohibit the credit reporting service from reporting it to the employer because under the

purpose of Roman numeral VIII, in my opinion it could be circumventing it by just purchasing a credit even though it was expunged by the Court and annulled by the Court.

REP. ROBERTS: I thought I made that remark--I thought this amendment was made, that is, not being able to ask them if they had been arrested; only if they had been convicted in the course of experience that would not get on employment records as such, because potential employees wouldn't share this central credit record. But, you raised the question--as far as the scale of information by any public agency--I would object to the sale of any information. Although, still allow the company to look at the public records as that would still be in the public records.

REP. SAYRE: In my opinion even though the court record was expunged, the credit record is not expunged.

REP. ROBERTS: Well, I am speaking about the application of employment.

CHAIRMAN ZACHOS: Any other questions of Representative Roberts? Further testimony on 607?

SENATOR CHANDLER: We are not ready for--

CHAIRMAN ZACHOS: Senator Chandler?

SENATOR CHANDLER: I just said before--so far as most of the testimony by the witnesses, certain things they object to, or certain changes to the proposed change. We haven't anyone in the past month or so come in and actually pleaded the case of the bill itself. Like a proponent or anybody other than original proponents a long time ago. We haven't any advocates for some of these things.

CHAIRMAN ZACHOS: I agree with you.

SENATOR CHANDLER: It's unfair, I had a lot of questions I wanted to ask and it's unfair to ask these people.

CHAIRMAN ZACHOS: That is something we can take up at the arguments made by

the committee members or commission members who prepared this, and have indicated their availability and they will be more than happy to be available to the committee for testimony. All right, we have finished our go-around for the Codification. Now, there are several people who wish to go back and touch lightly, and I emphasize the word, "lightly". There are sections that have been previously discussed, and it is now ten minutes to one and I don't want to break for lunch, but, I do also want to indicate to everyone that this committee will probably go into executive session the major part of this afternoon so it can be prepared and sent into the Legislature. I will now ask for these people who wish to testify on any section or make general comments on the entire code. If they wanted to testify and have not been given the opportunity. I only ask that you be considerate of the time of the committee and schedule that has been set forth. Incidentally, I want to read into the record a letter that was received from Mrs. Robert Z. Norman dealing with abortion. She has prepared a statement and it will become part of the record and made available to each member of the committee. Proceeding on this basis, Mr. Whitney indicated he wanted to be heard.

MR. WHITNEY: Thank you, Mr. Chairman. We were not at the last meeting when you discussed Arson and Destruction of Property, and since that time research has been done on it and I have with me at this time the inspector of the majority of fire investigations, and he has made some notes and I would like to, if I may, have him present them. This is Inspector Gilbert of Franconia.

INSPECTOR GILBERT: Mr. Chairman, I have prepared a rather lengthy statement and I would like to touch on a few things and then submit it to the committee. We will re-work it first and then submit it to you. We have two primary objections to the chapter on Arson. We realize that the committee usually deals with administrative regulations and the technical nature, and we may raise some

elementary questions, precisely, about someone who has experienced the law or works with criminal law such as a full time police chief. We are also concerned with the category of Arson under this new chapter--exactly what type of arson falls under these categories? We are particularly concerned with the definition for "occupied structure". This is on page 56 under the Burglary section. The first part is clear, relative to "overnight accommodation" but, "for carrying on business therein"; to us this is a definition we would like to see more precise. We would presume it would include a store, but how about a barn with milking cows or used for a storage of hay? Would this be included: a warehouse of any kind, or a library, or a school? We think it should be better defined because it raises the problem that if it is not, as to the subject of overnight, and it does not have business therein such as a school; and a person sets fire to it in the night and indangers no one, is it a misdemeanor to burn down a 3 million dollar school complex? I am skipping over some of these items because I don't want to prolong this. We are concerned about the "knowingly or recklessly inflicts bodily injury on anyone." This is a rather broad statement in our opinion and we would like to see it more defined. We also have a question under paragraph I, the last phrase. Property of another. I read the transcript of the previous hearing and there was a discussion if you wanted to burn your own property you could and there was a constitutional question about your ability. We would like to have that cleared up and does it include, for example, a person who owns his home but has a mortgage on it; or a lean, or an attachment, or insurance on it even though the owner didn't attempt to collect on the insurance. We feel that this is an area that is not well defined as we interpret it. Possibly a person with a legal background could easily answer this question. That is essentially the testimony we have; I would like to touch on. One other point as far as property goes, it's a misdemeanor if it indangers no one else or not occupied. Does this not conflict a little bit with 579:2; Criminal Mischief, there it is

a class B felony if the loss is over a thousand dollars as done by someone. Could not arson also include something along the line if a building, structure, or property valued at more than one thousand dollars would be a class B felony and less than a thousand dollars would be a misdemeanor? You might also add as a misdemeanor a dilapidated or abandoned building.

CHAIRMAN ZACHOS: Any members of the committee have any questions of Inspector Gilbert or Mr. Whitney? Anyone else wish to make a comment?

DEPUTY CHIEF KEHAS: Arthur Kehas, Deputy Police Chief from Manchester, New Hampshire. I have a few comments I would like to get on the record. I think it is very important in these days of changing judicial field not only the Supreme Court decisions throughout the land and the interpretations of various Courts, but, also the proposed code as adopted and is put into affect. Then, there is going to be a great deal of interpretation at many levels such as presented here in the room while the hearing is going on. I think I would like to present to the committee a suggestion, and I am speaking for myself as well as for the department. The State should have a right of an appeal in finding them not guilty as proclaimed by the Court and as the Federal Court has got in their judicial system. In the State of Connecticut, that is in their judicial system as well. If the State loses on a question of law the State can appeal to it. At the present time, the State does not have the opportunity as the defendant has.

SENATOR KOROMILAS: If I understand you correctly, you are satisfied with this particular code except you feel that there should be a right of appeal by the State; is that a generally fair remark?

DEPUTY CHIEF KEHAS: No, I don't endorse the whole thing and I don't say that it is all wrong. I go along with the other police chief's that the adoption of any new law which proclaims judicial interpretation raises havoc with the police administration or any administration in as far as it constitute offenses.

I only submit to the committee for deliberation is the fact that the State ought to have a right to appeal because of questions of law.

SENATOR CHANDLER: You say one other State has a right to appeal?

CHIEF DEPUTY KEHAS: There is one I know of.

CHAIRMAN ZACHOS: The common law is that the State does not have a right in criminal nonconvictions.

MRS. PEARSON: First, I don't know if I have a right to speak as I am not a resident of New Hampshire.

CHAIRMAN ZACHOS: You certainly may.

MRS. PEARSON: I am a nurse who is employed in New Hampshire. And I would--

CHAIRMAN ZACHOS: Would you state your name for the record, please.

MRS. PEARSON: Edith Pearson. I am a nurse and I would like to speak in favor of the 575:5, Abortion reform.

SENATOR KOROMILAS: Maybe we should have your address for the record.

MRS. PEARSON: Eliot, Maine. I work in New Hampshire, in the Portsmouth area of New Hampshire, and the reason I would like to speak is because being in the profession and working in the hospital, I know there are occasions under the present law where a woman's life is in dangered by a pregnancy or a cardiac condition, and know the physician is forced to break the law and terminate the pregnancy which is not allowed by our present statute or else to sacrifice the life of the mother; and I have heard--at least reputed--that there are obstetricians and gynecologists who have said, "yes" they have had the woman taken care of, he didn't say how. I think the implication is clear that physicians in the State have been forced, under the old law, to take the law into their own hands.

CHAIRMAN ZACHOS: I think then you are appearing in favor of the proposed?

MRS. PEARSON: Of the proposed change, right.

CHAIRMAN ZACHOS: Any members of the committee have any questions they would

like to ask Mrs. Pearson? Thank you. Any further general comments of testimony? If not, I want to thank some of our regulars for the very careful attention they have given to the commission's report. I am sure I speak for the committee when I say their efforts have not gone unnoticed. For the most part, their comments have been very helpful; I am not saying the committee will adopt any of them, all of them, or anything else. But, we appreciate the fact that you gave time to the problem. I would just like to indicate to you what we'll do from here on end. The code, while it is in the hands of the joint committee, will have executive sessions and probably other executive sessions and we may, if the committee feels necessary, have another public hearing; although I don't think that is likely. We will make a report to the next session of the Legislature, and if we so deem it advisable, recommend legislation to them. Again, thank you for coming and we appreciate your efforts.

(meeting adjourned at 1:05)